

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-7254

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTON MALAJ,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CR-92-170-A, CA-95-744-AM)

Submitted: January 23, 1996

Decided: February 16, 1996

Before MURNAGHAN, NIEMEYER, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Cheryl Johns Sturm, West Chester, Pennsylvania, for Appellant.
John Kuchta, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order denying his 28 U.S.C. § 2255 (1988) motion. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm substantially on the reasoning of the district court. United States v. Malaj, Nos. CR-92-170-A; CA-95-744-AM (E.D. Va. June 19, 1995). In addition, Appellant's claim that the sentencing court violated Fed. R. Crim. P. 32 was waived by Appellant's failure to pursue an appeal and raise this nonconstitutional issue in that proceeding. See United States v. Emanuel, 869 F.2d 795, 796 (4th Cir. 1989). Finally, Appellant's claim that his counsel was ineffective for dismissing his appeal without Appellant's knowledge is meritless. We find that Appellant's failure to apply for reinstatement of his appeal, when given the opportunity to do so by this court, prevents him from showing that he was prejudiced by his counsel's performance as required by Strickland v. Washington, 466 U.S. 668, 693-697 (1984). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED